

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	CASE NO. 8:11CR222
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
RAUL RENTERIA-GARCIA,)	
)	
Defendant.)	

The Court has received the Revised Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 41). The Defendant has also filed a motion for deviation (Filing No. 40). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant raised the following objections to the PSR: 1) factual assertions that he used two particular aliases and the corresponding assertion in ¶ 44 that he has been arrested twice for driving under the influence (“DUI”); 2) the factual assertions and assigned criminal history points in ¶¶ 33 and 34; and 3) the factual assertions in ¶¶ 36 and 38. The Defendant argues that he should be assigned to Criminal History Category I and his sentencing guideline range should be 6-12 months.

Aliases and Statement Regarding Two DUIs in ¶ 44

These objections do not affect the guideline range, and aside from a mention of two DUI arrests, the significance of the alleged aliases, “Lorenzo Policarpio” and “Enasmo Balido,” is not readily apparent. The objections are denied.

Alleged Prior Convictions in ¶¶ 33 and 34

The objections will be heard at sentencing. The government has the burden of proof by a preponderance of the evidence.

Factual Assertions in ¶¶ 36 and 38

These objections do not affect the guideline range, and they are denied.

Motion for Deviation

The Defendant's motion for deviation (Filing No. 40) will be heard at sentencing.

IT IS ORDERED:

1. The Defendant's objections to the aliases "Lorenzo Policarpio" and "Enasmo Balido," the statement regarding two DUI arrests in ¶ 44, and the objections to ¶¶ 36 and 38, of the PSR are denied;
2. The Defendant's objections to ¶¶ 33 and 34 will be heard at sentencing;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

6. The Defendant's motion for deviation (Filing No. 40) will be heard at sentencing.

DATED this 19th day of January, 2012.

BY THE COURT:

s/ Laurie Smith Camp
Chief United States District Judge